

**SUMMARIZED MINUTES
SCOTTSDALE CITY COUNCIL
TUESDAY, JANUARY 24, 2006**



**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

CALL TO ORDER

Mayor Manross called to order a Regular Meeting of the Scottsdale City Council on Tuesday, January 24, 2006 in the City Hall Kiva at 5:05 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Ron McCullagh
Council Members Betty Drake, Wayne Ecton, W.J. "Jim" Lane,
Robert Littlefield, and Kevin Osterman

Also Present: City Manager Jan Dolan
City Attorney Deborah Robberson
City Clerk Carolyn Jagger

PLEDGE OF ALLEGIANCE - Councilmember Drake

INVOCATION - Pastor Frank Shirvinski, Chaparral Christian Church

PRESENTATIONS/INFORMATION UPDATES - Congratulations to Fire Chief Willie McDonald on receiving the 2006 Optima Award from Workforce Management trade magazine.

PUBLIC COMMENT

Alan Note, 11563 E Quartz Rock Rd, 85255, urged Council to act to protect apartment residents whose homes are being converted to condominiums.

David Rajput, Citizens Against Bad Government, 7637 E Edgemont Av, 85257, presented two petitions (attached) asking the Council to: (1) place the Sexually Oriented Business ordinance before the voters on the May 16, 2006 election ballot, and (2) form a subcommittee to negotiate with the affected businesses to achieve a workable ordinance.

NOTE IN ACCORDANCE WITH PROVISIONS OF THE ARIZONA REVISED STATUTES THE SUMMARIZED MINUTES OF CITY COUNCIL MEETINGS ARE NOT VERBATIM TRANSCRIPTS. ONLY THE ACTIONS TAKEN AND DISCUSSION APPEARING WITH QUOTATION MARKS ARE VERBATIM. DIGITAL RECORDINGS OF CITY COUNCIL MEETINGS ARE ON FILE IN THE CITY CLERK'S OFFICE.

CONSENT AGENDA ITEMS 1 - 14

ITEM 12 WAS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION.

1. Oregano's Pizza Bistro Extension of Premises Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a permanent extension of premises to add a storage area.

Location: 7215 E. Shea Boulevard

Reference: 50-EX-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov

2. Tandoori Times Indian Bistro (Restaurant) Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license.

Location: 6810 E. 5th Avenue

Reference: 81-LL-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov

3. Caleo Resort & Spa (Bar) Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person transfer of a series 6 (bar) liquor license.

Location: 4925 N. Scottsdale Road

Reference: 82-LL-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov

4. One Scottsdale Well Agreement

Request: Adopt Resolution No. 6825 authorizing Well Agreement No. 2003-143-COS between Corrigan/DMB and City of Scottsdale regarding various alternative well system improvements.

Key Items for Consideration:

- This agreement will allow DMB to prepare the One Scottsdale (Stacked 40s) property for future development consistent with the water needs of the development and Water Resources Department standards.
- The City will maintain the existing capacity to extract water from the basin.
- These well system improvements will tie into the CAP Water Treatment Plant and assist in providing peak demand capacity.
- This agreement provides the flexibility for DMB and the City to work together to provide aesthetic enhancement for the Scottsdale Road scenic corridor at an existing adjacent well site.

Related Policies, References:

- Agreement is related to case 20-ZN-2002 (One Scottsdale/Stacked 40s).
- Construction and timing for the projects included in the agreement are related to the Scottsdale Road and Center Drive projects the City and DMB currently have under design.

Staff Contact(s): Kroy S. Ekblaw, Executive Assistant, 480-312-7064, kekblaw@scottsdaleaz.gov;
Dave Mansfield, Water Resources General Manager, 480-312-5681, dmansfield@scottsdaleaz.gov

5. Engineering Services Contract for Design of the Indian Bend Wash Multi-Use Path Connection Improvements

Request: Authorize Engineering Services Contract No. 2006-004-COS with Carter & Burgess, Inc., in the amount of \$149,220 for the design of Indian Bend Wash Multi-Use Path Connection Improvements.

Related Policies, References: FY 2005/2006 Capital Improvement Plan

Staff Contact(s): Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov

6. Design Phase Services Contract for Fire Station Number 2

Request: Authorize Construction Manager at Risk (CM@Risk) Design Phase Services Contract No. 2006-005-COS with Sun Eagle Corporation in the amount of \$51,942 for pre-construction services for Fire Station Number 2, proposed in the vicinity of the northeast corner of Indian School Road and 75th Street.

Related Policies, References:

- On August 29, 2005 City Council authorized Architectural Services Contract No. 2005-131-COS with LEA Architects, LLC for the design of Fire Station 2.
- Council adopted Resolution No. 6580 authorizing purchase of property intended for construction of a new Downtown Fire Station on December 6, 2004.

Staff Contact(s): Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov

7. Application to the Maricopa HOME Consortium for Federal HOME Funds for the Acquisition and Rehabilitation of Rental Units in Scottsdale

Request: Adopt Resolution No. 6810 supporting an application for federal HOME funds by Community Services of Arizona (CSA), an Arizona non-profit corporation, to the Maricopa HOME Consortium for the acquisition and rehabilitation of existing rental housing in Scottsdale.

Related Policies, References: City Council adopted Resolution No. 6675 on June 7, 2005, which authorized Intergovernmental Agreement No. 2005-002A-COS to continue participation in the Maricopa HOME Consortium.

Staff Contact(s): Debra Baird, Community Services General Manager, 480-312-2480, dbaird@scottsdaleaz.gov; Mark J. Bethel, Community Assistance Manager, 480-312-2309, mbethel@scottsdaleaz.gov

Mayor Manross opened public testimony:

Lyle Wurtz, 6510 E Palm Ln, 85257, urged Council to provide more low-cost housing near Scottsdale employment centers.

Mayor Manross closed public testimony.

8. WestWorld Facility Use License with Region VII Arabian Horse Association

Requests: Adopt Resolution No. 6823 authorizing a five-year Facility Use Agreement No. 2006-008-COS with Region VII – IAHA to utilize WestWorld's equestrian facilities for their 2007 – 2011 Regional Arabian Horse Shows held each April.

Related Policies, References: Scottsdale Revised Code (SRC) Section 2-221(c) states: The City Manager or designee shall have the authority to enter into temporary licenses or similar agreements for the use of city owned property, including but not limited to, land, buildings, office space, rooms, and other interior and exterior space, but not city rights-of-way. Such agreements shall be in the form approved by the City Attorney. Such agreements shall have a term of one (1) year or less and a unilateral termination clause in favor of the city that does not require the city to give more than thirty (30) days' notice of cancellation. Any license or other such agreement not meeting these criteria requires approval by the City Council.

Staff Contact(s): Roger Klingler, Assistant City Manager, 480-312-5830, rklingler@scottsdaleaz.gov

Mayor Manross opened public testimony:

Janice McCrea Wight, Chairman, Region VII Championship Arabian Horse Show, 9622 E Cholla St, 85260, spoke in support of the license, and said she hoped to make the horse show the best in the country.

Mayor Manross closed public testimony.

9. Marketing Consultant Contract for City Trolley Services

Request: Adopt Resolution No. 6818 authorizing Contract No. 2006-002-COS with Asylum Pipeline in the amount of \$33,750 to assist City of Scottsdale staff in providing a successful image and brand for the family of trolley services through a cohesive, consistent and comprehensive marketing program. Included in this effort are the following elements: designing a naming framework, brand logos, color schemes and promotional concepts. In addition, the marketing firm is expected to facilitate and guide marketing input from stakeholders.

Staff Contact(s): Mary O'Connor, Transportation General Manager, 480-312-2334, moconnor@scottsdaleaz.gov

10. Trolley Vehicle Purchase for Expanded Levels of Service

Request: Authorize the purchase of five trolley vehicles from Arizona Bus Sales for \$1,385,910 to expand the operation of the southern circulator service to include additional service area and potentially better service frequencies. Request for Proposal #03RP023 describes the original agreement, administratively awarded to Arizona Bus Sales.

Related Policies, References: RFP #03RP023; City Procurement Code

Staff Contact(s): Mary O'Connor, Transportation General Manager, 480-312-2334, moconnor@scottsdaleaz.gov

11. Authority for Human Resources to Receive Criminal History Information for Employment Purposes at the City of Scottsdale

Request: Consider adopting Ordinance No. 3659, amending Chapter 14 of the Scottsdale Revised Code, to authorize the Human Resources General Manager to request and receive criminal history information for the purpose of evaluating the fitness of applicants for employment and designated volunteer positions at the City of Scottsdale.

Related Policies, References:

- Arizona Revised Statutes 41-1750; Public Law 92-184, Section 902; Section 1, of the Scottsdale City Charter
- Ordinance No. 2424
- City Code Chapter 14-41(i) relating to background checks for employment purposes

Staff Contact(s): Teri Traaen, Human Resources General Manager, 480-312-2615, ttraaen@scottsdaleaz.gov

12. **Legal Counsel to the Hearing Officer for the Southwest Ambulance Bid Protest**
REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE BELOW.

13. **Moved to the Regular Agenda**

14. **Grant Application for Funding the Development of the Gateway Access Area in the McDowell Sonoran Preserve**

Request: Adopt Resolution No. 6821, authorizing staff to submit a grant application for approximately \$107,000 in Arizona State Parks Trails Heritage Funds to assist in funding the development of the Gateway Access Area in the McDowell Sonoran Preserve, and to accept the grant funding should the application be successful.

Related Policies, References: This action directly supports City Council Broad Goal B: Preserve the Character and Environment of Scottsdale, and sub-goals under Goal B: Create access into the Preserve, and Create learning opportunities in the Preserve; and Goal F: Fiscal and Resource Management.

Staff Contact(s): Robert Cafarella, Preservation Director, 480-312-2577, rcafarella@scottsdaleAZ.gov

MOTION AND VOTE – CONSENT AGENDA

COUNCILMAN LANE MOVED FOR APPROVAL OF CONSENT AGENDA ITEMS 1 THROUGH 14, WITH THE EXCEPTION OF ITEMS 12 AND 13. COUNCILMAN OSTERMAN SECONDED THE MOTION, WHICH CARRIED 7-0.

REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION:

12. **Legal Counsel to the Hearing Officer for the Southwest Ambulance Bid Protest**

Request: Authorize execution of Contract No. 2006-007-COS in a maximum amount of \$20,000 with Charles E. Jones for legal services in connection with the bid protest initiated by Southwest Ambulance.

Staff Contact(s): Deborah W. Robberson, City Attorney, 480-312-2405, drobberson@scottsdaleaz.gov

Vice Mayor McCullagh questioned the necessity of spending an additional \$20,000 on the contract.

City Attorney Deborah Robberson explained the reasoning behind providing independent legal advice, and said that as a practical matter, the attorney in question, Mr. Charles Jones, has already provided services and worked with the hearing officer in the past.

MOTION AND VOTE – ITEM 12

COUNCILMAN LITTLEFIELD MOVED FOR APPROVAL OF ITEM 12, CONTRACT NO. 2006-007-COS. COUNCILMEMBER DRAKE SECONDED THE MOTION, WHICH CARRIED 7-0.

REGULAR AGENDA ITEM - 13

13. State Expenditure Limit – Permanent Base Adjustment Election

Request: Adopt Resolution No. 6815 to place a proposition on the May 16, 2006 Runoff Election ballot seeking voter approval to adjust the City of Scottsdale's permanent base expenditure limit by \$12 million.

Staff Contact(s): Craig Clifford, Financial Services General Manager, 480-312-2364, cclifford@scottsdaleaz.gov; Deborah Robberson, City Attorney, 480-312-2405, drobberson@scottsdaleaz.gov

Staff provided a presentation outlined as follows:

- Baseline adjustment summary
 - Not a tax issue
 - Not a revenue issue
 - Not a budget issue
 - Not a debt issue
- State mandated Baseline established in 1979
 - Annual adjustments for population changes and inflation
 - No automatic adjustments for revenue changes or municipal service programs
- Calculation of Baseline
- Baseline vs. local revenue
- Baseline vs. expenses
- Adjustment election process
- Reasons for adjustment
 - Revenue growth
 - Operating impacts
 - Technology projects and investments
- Penalty for non-compliance (between \$6M and \$20M annual revenue loss)

Council and staff discussion:

- Scottsdale is one of a handful of Arizona cities that had the foresight to go to voters long ago to request the exclusion of the capital program from the adjustment election process.
- The maturation of the city since the 1990s and a subsequent increase in revenues are factors driving this request.
- Councilman Lane questioned why there was no indication or notification during the budget approval process that the City was approaching the base expenditure limit. Chief Financial Officer Craig Clifford explained that the calculation is complicated and said neither he nor his counterparts in other cities can accurately assess two years in advance that they are nearing the base expenditure limit.
- It was noted that when this law was passed in 1979, it did not make any adjustments for many of the revenues cities now receive because of voter decisions. The law also did not

anticipate many of the municipal services needs of cities; and now the City needs the ability to spend its revenues on the things the residents voted for.

- It was suggested that this mandate is poor legislation and that the League of Cities and Towns should look into having it reversed.

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E Palm Ln, 85257, opposes the increase, saying the City should be more conservative with taxpayer money.

Mayor Manross closed public testimony.

MOTION AND VOTE – ITEM 13

COUNCILMAN OSTERMAN MOVED FOR APPROVAL OF ITEM 13, RESOLUTION NO. 6815.
COUNCILMAN ECTON SECONDED THE MOTION, WHICH CARRIED 7-0.

CITY MANAGER'S REPORT - None

MAYOR AND COUNCIL ITEMS

15. Citizens' Petition Requesting Censure of Three Council Members Regarding Nomination Petition Challenge

Request: Consideration of citizens' petition that was provided to Council at the January 10, 2006 City Council meeting. The signers petitioned the City Council to censure three City Council members regarding the Nan Nesvig nomination petition challenge, demanded full public disclosure of events, facts and parties involved, and have asked that all three Council Members be required to reimburse the City for additional expenses involved in the City's response.

- Outside Counsel Andrew McGuire reported that he had provided the City Council with a legal opinion in writing (copy attached); therefore, he would not rehash the entire opinion. Mr. McGuire offered to cover the highlights so that residents would hear a summary of the opinion the City Council had received. Mr. McGuire said the petition raised the question of whether the City Council has authority to censure one of its own, and stated his opinion that the City Council lacks this authority.
- In response to a question from Councilman Lane, Mr. McGuire said that his opinion did not directly go to what may or may not be included in an ethics code. Mr. McGuire explained that not all ethics codes have a censure or penalty mechanism. Most of them, including those of Paradise Valley and Fountain Hills, were intentionally written as statements of policy and guidelines. The Scottsdale ethics code currently being drafted would need to be reviewed to determine whether or not it contained enforcement clauses.

Mayor Manross opened public testimony.

George Knowlton, 8701 E Valley View Rd, 85250, said he believes these three gentlemen lied and he would still like to see a resolution of censure.

Darlene Petersen, 7327 E Wilshire Dr, 85257, expressed her embarrassment for these gentlemen and the City, and questioned the necessity for secrecy. She also believes something should be done regarding paid petition gatherers.

Kate Campbell, 8350 E McKellips, #33, 85257, said she believes that the gentlemen should be accountable for their behavior.

Mayor Manross closed public testimony.

Council discussion:

- In order to respond to the petition regarding the three Council members, outside counsel Andrew McGuire said it was appropriate to divide the question into three separate motions, with each council member named in the petition recusing himself at the time of the motion concerning themselves.
- Rather than repeat certain statements, Council clarified that their comments would apply to each council member named in the petition.
- Councilmember Drake said that candidate petitions are a fair target, and anyone running for office should only be on the ballot if he or she has the required number of signatures. She said that the consequences of the petition challenge have been finger-pointing, allegations, media attention, and conspiracy theories. She said she sees no benefit in censure. The upcoming election will give the public a chance to weigh-in and to let everyone know what they think. Councilmember Drake challenged people to get out, get involved, get signatures well in advance, and get on the ballot in 2008.
- Councilman Lane said he feels the events surrounding the petition challenge amount to a breach of trust, as well as conduct unbecoming a Council person. The pledge made by the incumbents not to disclose the identities of those involved in the challenge has caused the public to wonder what really happened. For that reason, he said he is personally embarrassed and disappointed in the three incumbents. Councilman Lane feels the strength of incumbency is already a threat for new candidates, and using it with secret political forces to intimidate those outside City Hall undermines the City's representative democracy.
- Vice Mayor McCullagh said the actions of the council members represent a serious setback in restoring public confidence, although this Council has been successful in many areas. Vice Mayor McCullagh stated he is not aware of any deed done or law broken that would be censurable, but feels the actions taken were certainly in bad form. He sincerely hopes the subjects of the citizens' petition will take whatever action necessary to relieve the public of the distrust that has been created. On March 14 and in the year 2008, voters will make their feelings about this incident known.
- Mayor Manross said removing someone from a ballot through petition challenge is not unique. She regrets what happened, feels embarrassed, and wishes things had not transpired the way they did. The many terrific things happening in Scottsdale and the accomplishments of the past few years make recent events regarding the petition challenge an even greater shame. Mayor Manross recalled that in 1992, someone opposing Mayor Drinkwater had their petitions challenged by a member of Mayor Drinkwater's campaign committee and was removed from the ballot. She said that is part of campaign politics. Nothing illegal has been done whatsoever. She stated that the Council could not respond to the petition with a censure action, and it was time to move on.

MOTIONS – ITEM 15

COUNCILMEMBER DRAKE MOVED TO DIVIDE THE QUESTION INTO THREE SEPARATE MOTIONS, ONE FOR EACH INDIVIDUAL. COUNCILMAN LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 7-0.

COUNCILMEMBER DRAKE MOVED TO ACKNOWLEDGE RECEIPT OF THE PETITION AND TAKE NO FURTHER ACTION WITH REGARD TO COUNCILMAN OSTERMAN. COUNCILMAN LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 6-0, WITH COUNCILMAN OSTERMAN ABSTAINING.

COUNCILMEMBER DRAKE MOVED TO ACKNOWLEDGE RECEIPT OF THE PETITION AND TAKE NO FURTHER ACTION WITH REGARD TO COUNCILMAN LITTLEFIELD. COUNCILMAN OSTERMAN SECONDED THE MOTION, WHICH CARRIED 6-0, WITH COUNCILMAN LITTLEFIELD ABSTAINING.

COUNCILMEMBER DRAKE MOVED TO ACKNOWLEDGE RECEIPT OF THE PETITION AND TAKE NO FURTHER ACTION WITH REGARD TO COUNCILMAN ECTON. COUNCILMAN LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 6-0, WITH COUNCILMAN ECTON ABSTAINING.

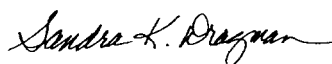
PUBLIC COMMENT

Karen Osterman, 2531 N 65th St, 85257, said her husband, Councilman Kevin Osterman, did not lie to the press. She encouraged citizens to get the facts about the situation before making insinuations. Mrs. Osterman suggested that Council put in place a mechanism for the City Clerk to be able to review all candidate petitions, so no one person is put in the position of challenging a candidate.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 6:44 P.M.

SUBMITTED BY:



Sandy Dragman
Recording Secretary

REVIEWED BY:



Carolyn Jagger
City Clerk

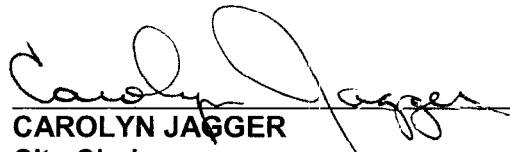
Officially approved by the City Council on February 21, 2006

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 24th day of January 2006.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 21st day of February 2006.



CAROLYN JAGGER
City Clerk

Recently more than 9,000 Scotsdale voters signed a referendum petition to refer to the Scotsdale voters the City Council's Adoption of Ordinance 3658 and Resolution No. 6802 (as modified). Pursuant to Article Two § 16 of the Scotsdale City Charter, we the undersigned residents of Scotsdale do hereby petition the Scotsdale City Council to place this issue before the Scotsdale voters on the May 16, 2006 City run-off election ballot.

[illegible]

Recently more than 9,000 Scottsdale voters signed a referendum petition to refer to the Scottsdale voters the City Council's Adoption of Ordinance 3658 and Resolution No. 6802 (as modified and adopted). Pursuant to Article Two § 16 of the Scottsdale City Charter, we the undersigned residents of Scottsdale, in an effort to spare the City from a divisive election, do hereby petition the Scottsdale City Council to form a Council subcommittee, consisting of three Councilmembers who are not running for re-election, to negotiate with the affected business owner and/or their representatives to achieve a workable ordinance which will allow the continued operation of the 30 year old businesses.

[illegible]

MEMORANDUM

TO: Mayor Manross and City Council

FROM:

Andrew J. McGuire

**CONFIDENTIAL - ATTORNEY
CLIENT PRIVILEGED**

DATE: January 23, 2006

SUBJECT: Authority of the Scottsdale City Council to Censure its Members

This firm has prepared this memorandum acting in the capacity of special counsel to the City of Scottsdale (the "City") with respect to the legal issues raised herein. As such, the contents of this memorandum are attorney/client privileged work product and, in our opinion, not subject to public disclosure. This memorandum is based on the factual background provided to us by City staff. Should the factual basis of this memorandum be changed for any reason, we reserve the right to conduct further analysis and, if necessary, amend this opinion.

ISSUE:

May the Scottsdale City Council (the "City Council") censure one or more of its members for conduct unbecoming a Scottsdale City Council Member?

BRIEF ANSWER:

The City Council lacks authority under both State law and the City of Scottsdale Charter (the "City Charter") to entertain a motion to censure one or more of its members for conduct unbecoming a Scottsdale City Council Member.

DISCUSSION:

According to the principle of municipal law known as *Dillon's Rule*, municipal corporations may only exercise those powers that are (i) expressly granted, (ii) necessarily or fairly implied in or incident to those powers expressly granted or (iii) essential to the accomplishment of the declared objectives and purposes of the corporation. 1 *Dillon, Municipal Corporations*, § 237, at

448-50 (5th ed. 1911). Arizona Courts have generally followed *Dillon's Rule*, holding that a municipality may exercise only those powers expressly granted them, together with those powers that arise by necessary implication out of those that are expressly granted. See, e.g., *City of Glendale v. White*, 67 Ariz. 231, 194 P.2d 435 (1948); *City of Mesa v. Smith Co. of Arizona*, 169 Ariz. 42, 816 P.2d 939 (App. 1991). Likewise, the law is well established in Arizona that municipalities may only exercise those powers granted by the State Constitution or general laws. *Union Transportes de Nogales v. City of Nogales*, 195 Ariz. 166, 169, 985 P.2d 1025, 1028 (1999). Article 13, Section 2 of the State Constitution permits a city of a minimum size to frame a charter for its own government. A charter city's primary authority to act is contained in the grant of power from the citizens to the municipal government in the adopted charter. *City of Scottsdale v. Superior Court in and for the County of Maricopa*, 103 Ariz. 204, 205, 439 P.2d 290, 291 (1968); *Williams v. Parrack*, 83 Ariz. 227, 230, 319 P.2d 989, 991 (1957). It is our understanding that the City of Scottsdale has operated under authority of its City Charter since 1961. In addition to the powers derived from its City Charter, the City is granted all powers conferred upon cities and towns pursuant to State Statutes. See ARIZ. REV. STAT. § 9-499.01. Therefore, the City Council's power to censure one of its members must be (i) expressly granted in its City Charter or the State Statutes or (ii) necessarily implied from such express grants.

The City Charter grants no express authority to the City Council to discipline its Council Members. The City Council's only authority relating to Council Member conduct is found in Article 2, Section 14 of the City Charter, which provides that the "Council shall determine its own rules and order of business subject to the provisions of this charter." The City Council has not adopted specific rules of procedure governing the conduct of its meetings or its members other than Section 2-37 of the City Code which provides that the Mayor shall "decide all questions of order and conduct the proceedings of the meetings in accordance with the parliamentary rules contained in *Robert's Rules of Order* unless otherwise provided by statute or ordinance." Turning to the State Statutes, ARIZ. REV. STAT. § 9-234(A) grants very limited authority to the City Council to punish a member by a small fine or expulsion from the meeting for disorderly conduct at a meeting of the City Council; no other authority to discipline is granted. Likewise, ARIZ. REV. STAT. § 9-240 (29) expressly authorizes the City Council to "adopt ordinances for the government of the corporation, its officers and persons within its corporate limits needful for the good government and order of the municipalities, and to provide the manner of prosecution and define the punishment for the violation of such ordinance," but fails to expressly grant the City Council the power of censure. Even if ARIZ. REV. STAT. § 9-240 (29) could be read to allow the Council to adopt an ordinance relating to censure (we believe it does not), it would be inapplicable here because the City Council has not adopted any such ordinance. Accordingly, neither the City Charter nor the general laws of the State grant the City Council the express authority to discipline a Council Member for conduct that occurs outside a council meeting.

The extremely narrow grant of authority found in ARIZ. REV. STAT. § 9-234(A) cannot lead to a necessarily implied power to censure a fellow Council Member. Likewise, Article 2, Section 14 of the City Charter also fails to create the necessarily implied power of censure. In the opinion of the only Arizona Court to have specifically addressed the censure issue, the Arizona Court of Appeals held that a school board could not adopt a policy that provided for censuring a school board member. See *Berry v. Foster*, 180 Ariz. 233, 235, 883 P.2d. 470, 472 (App. 1994). The

statute at issue in *Berry* gave the school board the authority to “prescribe rules for its own governance.” See ARIZ. REV. STAT. § 15-321(D). Because the language of 15-321(D) is substantially similar to Article 2, Section 14 of the City Charter, the *Berry* decision would very likely be read to prohibit the City Council from deriving the censure power from the City Charter. Therefore, the power to censure cannot be necessarily implied from any express City Charter or statutory grant of authority.

The City Council is required by Article 2, Section 16 of the City Charter to act upon a petition brought by a Scottsdale citizen within 30 days of receipt. The City received a petition from several citizens on January 10, 2006, requesting that the City Council “censure Councilmembers Kevin Osterman, Wayne Ecton and Robert Littlefield . . .” Because the City Council lacks the power to impose such censure, it is improper for the City Council to consider a motion relating to censure. See *Robert’s Rules of Order Newly Revised* (10th ed.), p.332, l. 15-17.

CONCLUSION:

The City Council has neither the express nor the implied authority for censuring one of its members. While the City Charter requires the City Council to take some form of action with respect to the citizen petition, a motion relating to censure of any Council Member is not a proper matter for consideration. Therefore, the City Council should deny further consideration of the citizen petition and refrain from any other motions relating to censure of a Council Member.